

## EAST PALESTINE VILLAGE COUNCIL APRIL 22, 2013 7PM COMMUNITY CENTER

Mayor Zuch called the meeting to order. Present were Atty. Beagle, Mr. Cohen, Mr. Elzer, Mr. Figley, Mr. Tyger and Mrs. Wisser. The minutes from the regular meeting and the Park Committee meeting of April 8, 2013 were approved on a motion by Mr. Elzer seconded by Mr. Cohen.

**AGENDA:** Sandy Green was on the agenda to speak on the protecting the beauty of East Palestine, however she did not show up. Mr. Figley stated that he has spoke to Mrs. Green and has been to their properties. He stated he also spoke to Mr. McNee and he said he was going to put up fence. He stated that he had taken pictures of the Greens and Kelley's homes and they are very well taken care of. Mr. Figley said he called Mr. McNee recently and asked him if he was going to put up the fence as he had previously said and McNee told him no, he was not. He asked him what he wanted him to tell the people and Mr. Figley said he couldn't repeat what McNee told him. He said he doesn't know what we can do but he isn't cooperating at all. The hillside is a mess with mud and dust on the street along with other issues and we need to do something *about it. There were no Mayors or Clerks report.*

**MANAGERS REPORT:** Village Manager Monteleone said he had a written report. The Wheathill project is making great progress. The new street signs are being put up and the poles are being sanded and painted brown. All of the spring hiring is completed. The cemetery looks great and they are starting on the second mowing already. Mr. Cohen asked if he saw any reason the pool could not open Memorial Day Weekend and Monteleone said no, that everything is on pace. The new trees have been planted at the park. The mowing is started at the park and it looks good. The Sumner St. project has taken longer than expected but the last of the utilities have finally been moved so we hope to do our portion next week. We have the green light to go ahead with the renovations at the brick pavilion. He said he also attended the meeting for the County Summer Youth Program last week and we are going to try to get six kids this year. And they had the bid opening today for the street paving. Mayor Zuch read a letter from the Arbor Day Foundation naming East Palestine a Tree City USA and she thanked all of the citizens, volunteers, and village officials for helping make us a Tree City. Monteleone stated that today they received the paperwork for the 2014 state purchasing road salt program and they have asked for a resolution. Finance Director Traci Thompson stated last year we didn't do a resolution; she just keeps attaching a resolution from the past. We need to submit our approximate tonnage now. Monteleone said they will try to do it without a resolution but if it doesn't go through they will have to do one.

**LAW DIRECTOR:** Atty. Smith had no report but Mr. Cohen stated they had received a letter from Dr. & Mrs. Ortenzio that was addressed to the Zoning Board. The Ortenzio's received a letter from us saying they have a right to appeal, but to him the Ortenzio letter is not an appeal and did not use the word appeal in it at all. Atty. Smith stated she did not feel the content indicated an appeal however it was address to the Zoning Board of Appeals. She said she spoke to Manager Monteleone and that they feel it either needs to be clarified with the Ortenzio's or it needs to be sent to the Zoning Board as it was addressed to them and not to council. Monteleone said that he directed the Clerk to mail it to the Zoning Board to let them decided if it was an appeal. Mr. Cohen said he doesn't think it should be up to the Zoning Board to decide, we need to find out if the Ortenzio's intended it as an appeal. Monteleone said he could contact Dr. Ortenzio and ask him. Atty. Smith said that is fine as long as it's clarified. Mr. Cohen said if he intends to appeal we need something more that was just an angry letter not a notice of appeal. Mr. Elzer asked Atty. Smith where this stands. She said the request was tabled by council and the ball is in his court to proceed if he wants an appeal or do a new application but the burden still lies with him to meet the requirements. Mr. Elzer asked if she agreed that this is something that state law is prohibits us from taking any further. She said she wouldn't say prohibit but it will be subject to appeal if council proceeds with it without it being an appropriate amendment to state law. The Planning Commission felt it was legitimate and gave it back to council, she personally doesn't know that he has met his burden and if that's not met and council acts on it it will be subject to review. Mr. Figley asked how influential the residents are. Mr. Cohen said for arguments sake if he does file an appeal and the zoning board up holds his side, it still has to come back to council for a vote. Atty. Smith said it would still have to go to a public hearing. Mr. Figley said he lives on that street and all of the residents have come to him voicing their displeasure. Mr. Cohen said he disagrees with Atty. Smith on this, The Supreme Court of Ohio not only says spot zoning is illegal but also unconstitutional, and Atty. Smith said that is true only if he can't meet the exceptions and there are exceptions. Mr. Cohen said he asked that it be tabled because everyone knew council was going to vote no and that it is illegal so why go forward with it. Mr. Elzer said we should never assume that we know how council is going to vote. Atty. Smith stated that

according to the Planning Commission meeting minutes it did appear that he had met the criteria for this under Ohio law, her concern from a due process standpoint is that because the letter was addressed to the Zoning Board we should not decide if that was an appeal. Mr. Cohen said at this point that after reading the procedure that he even has the right to an appeal, there is nothing that says if council tables an ordinance that there is the right to appeal. Atty. Smith said she tends to agree with that and at the last meeting when it was said he could appeal she questioned it but didn't have the information there. Mr. Cohen said they were erring on the side of fairness to tell him he had the right to appeal but he doesn't think he does. Atty. Beagle said he does have the right to file again but would we want to go back to the beginning and start over, that she would be willing to just let him do the appeal. Atty. Beagle said that he should be advised that instead of having the emotional angry letter he should have some basis. Atty. Smith said she didn't feel we should be giving him legal advice and Atty. Beagle said that's not what she meant. Atty. Beagle asked if we had a form to fill out for appeal, and the Clerk said not to her knowledge. Mr. Cohen said he didn't want to encourage or discourage him and Mr. Figley asked why we would do anything. Mr. Cohen said because we have this letter and Mr. Figley said he wouldn't request the appeal from council it would be from the zoning board and he was told that is who the letter is addressed to. Mr. Cohen said we should give the letter to the zoning board because it's addressed to them. Atty. Smith said it is her recommendation that the letter be giving to the zoning board because it was addressed to them and let them decide if it was an appeal. Atty. Beagle said she is not an attorney in Ohio however she hoped that she could use some of her knowledge to help the city. She does not think we should give Dr. Ortenzio legal advice and she was not doing that but we should have some type of form for them to fill out so the people can tell us why they have the appeal and would make things easier. Mayor Zuch said they can come up with a form at the office to use in the future.

**STREET:** Mr. Figley said the bid opening was today and the bids came in right around where the Village Manager estimated. The low bidder was Butch & McCree Paving at \$242,906.00; the next was RT Vernal at \$246,741.00, Diorio Paving at \$251,000.00, Shelly Company at \$253,000.00, CJ Long Paving at \$259,000.00 and Central Allied Enterprises at \$273,000.00. Manager Monteleone said he is pleased with the numbers; we have the money to take of this amount and hoping to have funds to have to take care of some additional work. He said he is planning on going with Butch & McCree Paving.

**SAFTEY/PARK/REC/CEM: NO REPORT**

**DEVELOPMENT: NO REPORT**

**UTILITY: NO REPORT**

**FINANCE: NO REPORT**

**VISITORS:** Katie Schwendemen, Dan Scott, John Jurjavic, Dianna Elzer, Chuck McGuire, Jim Hill, Kip Reeves, John & Bonnie Davis, Mary Anne Tyger, Larry & Terri Ward, Tami & Bob Harris, Rich Bolon and Traci Thompson.

**LEGISLATION:** Atty. Beagle introduced **Ord. 13-2013** for a third reading and made a motion that it be read by title only, seconded by Mr. Cohen. **An ordinance repealing East Palestine Municipal codified ordinance no 3-2012; "An ordinance consenting to the annexation of the 9.312 acres known as the "Brittain Motors Annexation", and declaring an emergency".** Atty. Beagle called for a vote on **Ord. 13-2013**. All in favor, 6 YES to pass. Atty. Beagle introduced **Ord. 14-2013** for a third reading and made a motion that it be read by title only, seconded by Mr. Cohen. **An ordinance repealing East Palestine Municipal Ordinance No. 4-2012; "An ordinance regarding municipal services to be rendered to the 9.312 acres known as the "Brittain Motors Annexation", and declaring an emergency".** Atty. Beagle called for a vote on **Ord. 14-2013**. All in favor, 6 YES to pass.

**ADJOURN:** Mr. Tyger made a motion to adjourn, seconded by Mr. Cohen. All in favor, meeting adjourned.

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**MAYOR MARGO ZUCH**

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**MISTI J. MARTIN CLERK**